

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

KERRY ROBERTS,

Petitioner,

CASE NO. 11cv2665 WQH (BLM)  
ORDER

vs.

DOMINGO URIBE, Warden,

Respondent.

HAYES, Judge:

The matter before the Court is the Reports and Recommendation (“R&R”) (ECF No. 8) of the Honorable Magistrate Judge Barbara L. Major, filed on March 19, 2012.

**I. Background**

On November 14, 2011, Petitioner filed his Petition for Writ of Habeas Corpus. (ECF No. 1). On January 17, 2012, Respondent filed a Motion to Dismiss on the grounds that Petitioner had not completed his habeas proceedings in state court, Petitioner had procedurally defaulted, and only one claim had been properly exhausted. (ECF No. 6). Respondent contends that Petitioner had a state habeas petition pending before the California Supreme Court; however, a ruling had not been issued. Respondent contends that the “federal Petition should be dismissed pending a final decision by the California Supreme Court concerning his habeas petition.” *Id.* at 3.

On March 19, 2012, the Magistrate Judge issued a Report and Recommendation (ECF No. 8) recommending that the Motion to Dismiss be denied. The Magistrate Judge states:

1 “Respondent acknowledges that the California Supreme Court’s ruling ... could affect  
 2 [Respondent’s arguments that the claims are unexhausted or procedurally defaulted].” *Id.* at  
 3 4. The Magistrate Judge stated: “Because the California Supreme Court has since issued its  
 4 ruling, and because the California Supreme Court’s order directly impacts the arguments  
 5 proffered by Respondent in his motion to dismiss, the Court RECOMMENDS that  
 6 Respondent’s motion to dismiss be DENIED without prejudice.” *Id.*

7 The Magistrate Judge concluded:

8 IT IS ORDERED that no later than April 3, 2012, any party to  
 9 this action may file written objections with the Court and serve a copy  
 10 on all parties. The document should be captioned “Objections to Report  
 11 and Recommendation.”

12 IT IS FURTHER ORDERED that any reply to the objections  
 13 shall be filed with the Court and served on all parties no later than April  
 14 17, 2012. The parties are advised that failure to file objections within  
 15 the specified time may waive the right to raise those objections on  
 16 appeal of the Court’s order. *See Turner v. Duncan*, 158 F.3d 449, 455  
 17 (9th Cir. 1998).

18 *Id.* at 4-5.

19 To date, neither party has filed objections to the Report and Recommendation.

## 20 **II. Discussion**

21 The duties of the district court in connection with a Report and Recommendation of a  
 22 Magistrate Judge are set forth in Federal Rule of Civil Procedure 72(b) and 28 U.S.C. §  
 23 636(b)(1). When a party objects to a Report and Recommendation, “[a] judge of the [district]  
 24 court shall make a de novo determination of those portions of the [Report and  
 25 Recommendation] to which objection is made.” 28 U.S.C. § 636(b)(1). When no objections  
 26 are filed, the district court need not review the Report and Recommendation de novo. *See*  
 27 *Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir. 2005); *U.S. v. Reyna-Tapia*, 328 F.3d  
 28 1114, 1121-22 (9th Cir. 2003) (en banc). A district court may “accept, reject, or modify, in  
 whole or in part, the findings or recommendations made by the magistrate judge.” Fed. R. Civ.  
 P. 72(b); *see also* 28 U.S.C. § 636(b)(1).

29 Neither party objected to the Magistrate Judge’s Report and Recommendation in this  
 30 case. This Court has reviewed the record and the Report and Recommendation in their

1 entirety. The Court finds that the Magistrate Judge correctly denied the Motion to Dismiss  
2 without prejudice because the California Supreme Court issued a ruling on Petitioner state  
3 habeas corpus petition.

4 **III. Conclusion**

5 IT IS HEREBY ORDERED that the Report and Recommendation (ECF No.8) is  
6 adopted in its entirety. The Motion to Dismiss filed by Respondent (ECF No. 6) is DENIED  
7 without prejudice.

8 DATED: May 24, 2012

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10 **WILLIAM Q. HAYES**  
11 United States District Judge

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